

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

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NPM No. 114-2004

August 13, 2004

MR. ERNESTO S. SAN JOSE

Chairman, Bids and Awards Committee
Philippine National Oil Company
Exploration Corporation
PNOC Energy Companies Bldg.,
Merritt Road, Fort Bonifacio,
Makati City

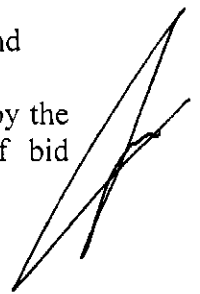
**Re : Request for Comments/Remarks on the Procedures Followed in the
Procurement of Asian Utility Vehicle**

Dear Mr. San Jose:

This refers to your letter dated August 6, 2004, which we received through facsimile on even date, requesting comments on the procurement by the Philippine National Oil Company Exploration Corporation ("PNOC-EC") of an Asian Utility Vehicle ("AUV").

As per your representation, there appears to be some irregularities that may have to be either addressed or clarified, to wit:

1. Whether or not public bidding was conducted by the Bids and Awards Committee ("BAC") for procurement of AUV in accordance with Republic Act 9184 ("R.A. 9184") and its Implementing Rules and Regulations Part A ("IRR-A");
2. Whether or not the prohibition on reference to brand names was violated; and
3. Whether or not the limited offer for a discount of Php35,000.00 included by the Lowest Calculated Bidder in its bid was considered for purposes of bid evaluation.



Procedures for Public Bidding

Our first concern pertains to the manner or method of procurement conducted by PNOC-EC for the procurement of an AUV. As stated in your letter, the end-user submitted to your Purchasing Section the Purchase Requisition (PR) for the AUV the specifications of which are based on the submitted quote of Toyota. We hereinafter quote the relevant portion of your letter, to wit:

The end-user submitted to our Purchasing Section the Purchase Requisition wherein the specifications of the required AUV were based on the submitted quote of Toyota. Subsequently, a sealed bidding was conducted, inviting six (6) Toyota dealers, namely: Toyota Manila Bay, Toyota Shaw, Inc., Toyota Quezon Ave., Toyota Cubao, Toyota Otis, and Toyota Shaw-Ortigas. (Emphasis supplied)

From the afore-quoted portion of your letter, we note two (2) possible irregularities in the subject procurement, specifically the following: (i) whether the procurement was conducted by the BAC or by the Purchasing Section; and (ii) whether an Invitation to Apply for Eligibility and to Bid ("IAEB") was posted/published for the procurement activity or the six (6) Toyota dealers were merely invited directly by PNOC-EC.

With respect to the first observation, please note that as provided in Section 12.1 of the IRR-A of R.A. 9184 the function of conducting competitive biddings pertains exclusively to the BAC. Thus, if the procurement of AUV was conducted by the Purchasing Section of PNOC-EC instead of its BAC, such procurement is tainted with an irregularity that may be a ground for its disallowance. As regards the second observation, we wish to point out that the subject procurement should, as general rule, follow competitive bidding procedures with the following steps, namely: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract.¹ Accordingly, failure to conduct any of the required steps in the conduct of a competitive bidding will warrant a valid disallowance of the procurement.

In view of the foregoing, if the procurement of AUV by PNOC-EC suffers from any of the irregularities mentioned, such procurement may be disallowed by the Commission on Audit.

Prohibition on Reference to Brand Names

Another concern is that no reference to brand names should have been made in the bidding documents since this is prohibited by R.A. 9184 and its IRR-A under Section 18 thereof which states as follows:

Specifications for the Procurement of Goods shall be based on relevant characteristics and/or performance requirements. Reference to brand names shall not be allowed.

Strict application of this prohibition is mandatory such that violation thereof justifies disallowance of the procurement. As such, although PNOC-EC may use the quote of Toyota as basis for the Approved Budget for the Contract ("ABC") of its AUV procurement, the

¹ Section 5(h), IRR-A, R.A. 9184

specifications in the bidding documents should not contain any reference to the brand Toyota; otherwise, disallowance is proper.

Bid Validity and Bid Evaluation

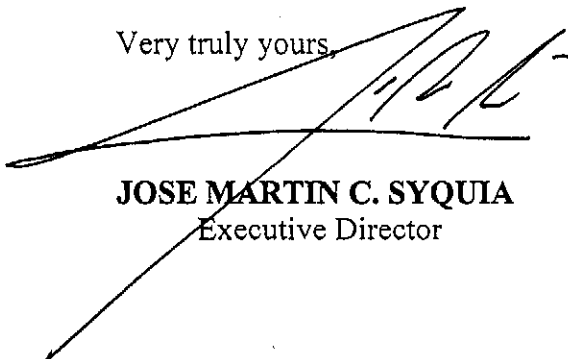
Lastly, we raise the concern on the conduct of the bid evaluation for the subject procurement. We note the fact that the quoted price of the Lowest Calculated Bidder, specifically Toyota Shaw-Ortigas, included a discount amounting to Thirty Five Thousand Pesos (P35,000.00) valid up to August 13, 2004 only.

Although discounts are not entirely prohibited, it should be made an integral part of the original bid such that the discount and the bid price have the same validity period in order for it to be considered for purposes of bid evaluation; otherwise, the bid shall be evaluated sans the discount. Accordingly, all premises considered, the bid of Toyota Shaw-Ortigas should have been evaluated without considering the discount offered.

This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director

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